

Todd M. Friedman (SBN 216752)
Meghan E. George (SBN 274525)
Adrian R. Bacon (SBN 280332)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddflaw.com
mgeorge@toddflaw.com
abacon@toddflaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TONY RIVERA , individually and on behalf of all others similarly situated, Plaintiff, vs. OPTIMA TAX RELIEF, LLC. ; DOES 1 through 10, inclusive, Defendant(s).) Case No.)) <u>CLASS ACTION</u>)) COMPLAINT FOR VIOLATIONS) OF:)) 1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.]) 2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227 ET SEQ.])) <u>DEMAND FOR JURY TRIAL</u>
---	--

Plaintiff, TONY RIVERA (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for himself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of OPTIMA TAX RELIEF, LLC (“Defendant”), in negligently,
 2 knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in
 3 violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.*
 4 (“TCPA”), thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
 7 a resident of California, seeks relief on behalf of a Class, which will result in at
 8 least one class member belonging to a different state than that of Defendant, a
 9 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call
 10 in violation of the TCPA, which, when aggregated among a proposed class in the
 11 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
 12 Therefore, both diversity jurisdiction and the damages threshold under the Class
 13 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

14 3. Venue is proper in the United States District Court for the Central
 15 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does
 16 business within the state of California and Plaintiff resides within this District.

17 **PARTIES**

18 4. Plaintiff, TONY RIVERA (“Plaintiff”), is a natural person residing in
 19 Whittier, California and is a “person” as defined by 47 U.S.C. § 153 (39).

20 5. Defendant, OPTIMA TAX RELIEF, LLC (“Defendant” or
 21 “DEFENDANT”), is in the tax preparation and relief business, and is a “person”
 22 as defined by 47 U.S.C. § 153 (39).

23 6. The above named Defendant, and its subsidiaries and agents, are
 24 collectively referred to as “Defendants.” The true names and capacities of the
 25 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
 26 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
 27 names. Each of the Defendants designated herein as a DOE is legally responsible
 28 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the

1 Complaint to reflect the true names and capacities of the DOE Defendants when
2 such identities become known.

3 7. Plaintiff is informed and believes that at all relevant times, each and
4 every Defendant was acting as an agent and/or employee of each of the other
5 Defendants and was acting within the course and scope of said agency and/or
6 employment with the full knowledge and consent of each of the other Defendants.
7 Plaintiff is informed and believes that each of the acts and/or omissions complained
8 of herein was made known to, and ratified by, each of the other Defendants.

9 **FACTUAL ALLEGATIONS**

10 8. Beginning in or around November of 2017, Defendant contacted
11 Plaintiff on his cellular telephone ending in -9045, in an effort to sell or solicit its
12 services.

13 9. Defendant called Plaintiff on his cellular telephone from phone
14 numbers confirmed to belong to Defendant, including without limitation (562) 582-
15 1230.

16 10. Plaintiff asked Defendant on at least two separate occasions to cease
17 calling him.

18 11. However, Plaintiff's repeated efforts to get Defendant to cease its
19 automated barrage of solicitations were to no avail, and Defendant continued to
20 harass and annoy him with calls.

21 12. Defendant used an "automatic telephone dialing system", as defined
22 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its
23 business services.

24 13. Defendant's calls constituted calls that were not for emergency
25 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

26 14. Defendant's calls were placed to telephone number assigned to a
27 cellular telephone service for which Plaintiff incurs a charge for incoming calls
28 pursuant to 47 U.S.C. § 227(b)(1).

1 15. Plaintiff is not a customer of Defendant's services and has never
2 provided any personal information, including his cellular telephone number, to
3 Defendant for any purpose whatsoever.

4 16. In addition, on at least two occasions, Plaintiff answered the telephone
5 and told Defendant to stop calling him. Accordingly, Defendant never received
6 Plaintiff's "prior express consent" to receive calls using an automatic telephone
7 dialing system or an artificial or prerecorded voice on his cellular telephone
8 pursuant to 47 U.S.C. § 227(b)(1)(A).

9 17. Plaintiff alleges upon information and belief, including without
10 limitation his experiences as recounted herein, especially his experience of being
11 called after expressly requesting that Defendant cease all calls to him, that
12 Defendant lacks reasonable policies and procedures to avoid the violations of the
13 Telephone Consumer Protection act herein described.

14 **CLASS ALLEGATIONS**

15 18. Plaintiff brings this action individually and on behalf of all others
16 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
17 Classes"). The class concerning the ATDS claim for no prior express consent
18 (hereafter "The ATDS Class") is defined as follows:

19 All persons within the United States who received any
20 solicitation/telemarketing telephone calls from
21 Defendant to said person's cellular telephone made
22 through the use of any automatic telephone dialing
23 system or an artificial or prerecorded voice and such
24 person had not previously consented to receiving such
25 calls within the four years prior to the filing of this
26 Complaint

27 19. The class concerning the ATDS claim for revocation of consent, to the
28 extent prior consent existed (hereafter "The ATDS Revocation Class") is defined
as follows:

1 All persons within the United States who received any
2 solicitation/telemarketing telephone calls from
3 Defendant to said person's cellular telephone made
4 through the use of any automatic telephone dialing
5 system or an artificial or prerecorded voice and such
6 person had revoked any prior express consent to receive
7 such calls prior to the calls within the four years prior to
8 the filing of this Complaint.

9 20. Plaintiff represents, and is a member of, The ATDS Class, consisting
10 of all persons within the United States who received any solicitation telephone calls
11 from Defendant to said person's cellular telephone made through the use of any
12 automatic telephone dialing system or an artificial or prerecorded voice and such
13 person had not previously not provided their cellular telephone number to
14 Defendant within the four years prior to the filing of this Complaint.

15 21. Plaintiff represents, and is a member of, The ATDS Revocation Class,
16 consisting of all persons within the United States who received any
17 solicitation/telemarketing telephone calls from Defendant to said person's cellular
18 telephone made through the use of any automatic telephone dialing system or an
19 artificial or prerecorded voice and such person had revoked any prior express
20 consent to receive such calls prior to the calls within the four years prior to the
21 filing of this Complaint.

22 22. Defendant, its employees and agents are excluded from The Classes.
23 Plaintiff does not know the number of members in The Classes, but believes the
24 Classes members number in the thousands, if not more. Thus, this matter should
25 be certified as a Class Action to assist in the expeditious litigation of the matter.

26 23. The Classes are so numerous that the individual joinder of all of its
27 members is impractical. While the exact number and identities of The Classes
28 members are unknown to Plaintiff at this time and can only be ascertained through
appropriate discovery, Plaintiff is informed and believes and thereon alleges that

1 The Classes includes thousands of members. Plaintiff alleges that The Classes
2 members may be ascertained by the records maintained by Defendant.

3 24. Plaintiff and members of The ATDS Class and The ATDS Revocation
4 Class were harmed by the acts of Defendant in at least the following ways:
5 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
6 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
7 members to incur certain charges or reduced telephone time for which Plaintiff and
8 ATDS Class and ATDS Revocation Class members had previously paid by having
9 to retrieve or administer messages left by Defendant during those illegal calls, and
10 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
11 members.

12 25. Common questions of fact and law exist as to all members of The
13 ATDS Class which predominate over any questions affecting only individual
14 members of The ATDS Class. These common legal and factual questions, which
15 do not vary between ATDS Class members, and which may be determined without
16 reference to the individual circumstances of any ATDS Class members, include,
17 but are not limited to, the following:

- 18 a. Whether, within the four years prior to the filing of this
19 Complaint, Defendant made any telemarketing/solicitation call
20 (other than a call made for emergency purposes or made with
21 the prior express consent of the called party) to a ATDS Class
22 member using any automatic telephone dialing system or any
23 artificial or prerecorded voice to any telephone number
24 assigned to a cellular telephone service;
- 25 b. Whether Plaintiff and the ATDS Class members were damaged
26 thereby, and the extent of damages for such violation; and
- 27 c. Whether Defendant should be enjoined from engaging in such
28 conduct in the future.

1 26. As a person that received numerous telemarketing/solicitation calls
2 from Defendant using an automatic telephone dialing system or an artificial or
3 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
4 claims that are typical of The ATDS Class.

5 27. Common questions of fact and law exist as to all members of The
6 ATDS Revocation Class which predominate over any questions affecting only
7 individual members of The ATDS Revocation Class. These common legal and
8 factual questions, which do not vary between ATDS Revocation Class members,
9 and which may be determined without reference to the individual circumstances of
10 any ATDS Revocation Class members, include, but are not limited to, the
11 following:

- 12 a. Whether, within the four years prior to the filing of this
13 Complaint, Defendant made any telemarketing/solicitation call
14 (other than a call made for emergency purposes or made with
15 the prior express consent of the called party) to an ATDS
16 Revocation Class member, who had revoked any prior express
17 consent to be called using an ATDS, using any automatic
18 telephone dialing system or any artificial or prerecorded voice
19 to any telephone number assigned to a cellular telephone
20 service;
- 21 b. Whether Plaintiff and the ATDS Revocation Class members
22 were damaged thereby, and the extent of damages for such
23 violation; and
- 24 c. Whether Defendant should be enjoined from engaging in such
25 conduct in the future.

26 28. As a person that received numerous telemarketing/solicitation calls
27 from Defendant using an automatic telephone dialing system or an artificial or
28 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff

1 is asserting claims that are typical of The ATDS Revocation Class.

2 29. Plaintiff will fairly and adequately protect the interests of the members
3 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
4 class actions.

5 30. A class action is superior to other available methods of fair and
6 efficient adjudication of this controversy, since individual litigation of the claims
7 of all Classes members is impracticable. Even if every Classes member could
8 afford individual litigation, the court system could not. It would be unduly
9 burdensome to the courts in which individual litigation of numerous issues would
10 proceed. Individualized litigation would also present the potential for varying,
11 inconsistent, or contradictory judgments and would magnify the delay and expense
12 to all parties and to the court system resulting from multiple trials of the same
13 complex factual issues. By contrast, the conduct of this action as a class action
14 presents fewer management difficulties, conserves the resources of the parties and
15 of the court system, and protects the rights of each Classes member.

16 31. The prosecution of separate actions by individual Classes members
17 would create a risk of adjudications with respect to them that would, as a practical
18 matter, be dispositive of the interests of the other Classes members not parties to
19 such adjudications or that would substantially impair or impede the ability of such
20 non-party Class members to protect their interests.

21 32. Defendant has acted or refused to act in respects generally applicable
22 to The Classes, thereby making appropriate final and injunctive relief with regard
23 to the members of the Classes as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. §227 et seq.**

27 33. Plaintiff repeats and incorporates by reference into this cause of
28 action the allegations set forth above at Paragraphs 1-32.

1 34. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple negligent violations of the TCPA, including but not limited to each
3 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

4 35. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
5 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
6 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

7 36. Plaintiff and the Class members are also entitled to and seek
8 injunctive relief prohibiting such conduct in the future.

9 **SECOND CAUSE OF ACTION**

10 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**
11 **47 U.S.C. §227 et seq.**

12 37. Plaintiff repeats and incorporates by reference into this cause of
13 action the allegations set forth above at Paragraphs 1-32.

14 38. The foregoing acts and omissions of Defendant constitute numerous
15 and multiple knowing and/or willful violations of the TCPA, including but not
16 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
17 *seq.*

18 39. As a result of Defendant's knowing and/or willful violations of *47*
19 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
20 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
21 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

22 40. Plaintiff and the Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B); and
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

41. Pursuant to her rights under the Seventh Amendment to the United States Constitution, Plaintiff demands a jury on all issues so triable.

Respectfully Submitted this 11th of June, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman

Todd M. Friedman

Law Offices of Todd M. Friedman

Attorney for Plaintiff